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August 27, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 27, 2009

Case Number: TSO-0738

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> For the reasons set forth below, I conclude that the individual should be granted a security clearance.<sup>2</sup>

## **I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on the individual's behalf in connection with that employment. During the ensuing investigation, the local security office (LSO) obtained information that raised security concerns, and summoned him for an interview with a personnel security specialist in August 2008. After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Based on this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter

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<sup>1</sup>An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 12 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual presented the testimony of five witnesses in addition to testifying himself.

## **II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS**

### **A. The Notification Letter**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (j) defines as derogatory, information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for this criterion, the Letter cites the conclusion of the DOE psychiatrist that the individual was a user of alcohol habitually to excess from 1998 to 2007, and has continued to drink to excess on occasion since that time frame. The Letter also relies on statements made by the individual during the psychiatric evaluation and/or the PSI indicating that he (i) believes that he has a problem with alcohol; (ii) continues to drink despite having expressed a desire to quit on at least two separate occasions; (iii) has had multiple hangovers, the last of which occurred in October 2008 when he became intoxicated after drinking five or six 16-ounce beers during a two-and-one-half hour period; (iv) reported to work smelling of alcohol in fall 2007, according to a co-worker; (v) has experienced marital problems because of his alcohol use; (vi) would get "beyond intoxicated" from 1998 to 2002 by drinking up to 12 beers during a single day, and from 2002 to 2007 would drink six to ten beers every night; (vii) was arrested in 1994 for DUI and for underage possession of alcohol; (viii) has had two alcoholic blackouts; and (ix) has later been embarrassed by things he said or did while intoxicated.

Under criterion (l), information is derogatory if it indicates that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation or duress which may cause [him] to act contrary to the best interests of the national security. Such conduct include[s], but [is] not limited to, criminal behavior . . . ." 10 C.F.R. § 710.8(l). As support for this criterion, the Letter cites the 1994 arrest mentioned in the preceding paragraph.

### **B. The DOE's Security Concerns**

The individual generally does not contest the allegations set forth in the Notification Letter. This derogatory information adequately justifies the DOE's invocation of criteria (j) and (l), and raises significant security concerns. Excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. Criminal acts also create doubt about a person's judgement, reliability and trustworthiness. By their very nature, they call into question a person's ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G and J.*

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013 (1995), (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

### **IV. FINDINGS OF FACT AND ANALYSIS**

The Part 710 regulations do not define the term "user of alcohol habitually to excess," and, unlike alcohol abuse or dependence, it is not a diagnosable psychiatric condition pursuant to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (Text Revision). However, in previous Personnel Security Decisions, OHA Hearing Officers have defined a "user of alcohol habitually to excess" to be someone who drinks to intoxication as a customary practice or pattern. *See, e.g., Personnel Security Hearing*, Case No. TSO-0453 (2007).

By any reasonable definition of that term, the individual has been a user of alcohol habitually to excess. From 1998 to 2002, the individual would drink to intoxication on an average of twice per month, sometimes consuming 12 beers over a six-to-eight hour period. DOE Ex. 11 at 30-32. From 2002 to 2007, he drank six to ten cans of beer “pretty much every night,” becoming intoxicated on each occasion. *Id.* at 33, 39. Indeed, at the hearing, the individual did not present any evidence that would contradict this conclusion. Instead, through his own testimony and that of Director of the Employee Assistance Program (EAP Director) at the individual’s job site, his “accountability partner,” his supervisor, his co-worker and his friend, he presented sufficient evidence to convince me that he has permanently altered this abusive pattern of drinking.

At the outset, I note that the period during which the individual drank to excess most consistently (2002-2007) occurred during his dysfunctional second marriage. The EAP Director, who counseled the individual and his second wife during their marriage, testified at the hearing that “fighting, arguing, screaming, slamming doors, all of those things . . . presented [during their marriage], and they fought. They were ferocious fighters.” Hearing transcript (Tr.) at 21. The individual told the DOE psychiatrist during his evaluation that he left his wife in 2006 because of her verbal abuse. DOE Ex. 7 at 7. During his PSI, the individual stated that his second wife was “borderline bi-polar,” and that he drank to alleviate the stress caused by that relationship and by his job. DOE Ex. 11 at 41-42.

After his divorce in the fall of 2007, the individual’s alcohol usage dropped precipitously. Between the divorce and the individual’s receipt of the DOE psychiatrist’s report in late February 2009, the individual’s consumption ranged from six to twelve beers per month during a large portion of this period, and at other times three to six beers over a period of up to four hours when he would go out with friends, which would occur once or twice a week. Whereas the individual was drinking to intoxication on a daily basis during his second marriage, he testified that between November 2007 and his receipt of the report, he became intoxicated “once or twice,” with the last instance occurring in October 2008. Tr. at 97, DOE Ex. 7 at 9. After the divorce, the EAP Director testified, the individual “seemed to be less alcohol-involved. . . . [H]e began to make sounder decisions and . . . began to realize that alcohol was a problem.” Tr. at 21.

When the individual received and read the DOE psychiatrist’s report in late February, he realized that he was “right on the edge [of developing an alcohol use disorder],” and that he’d “better figure it out and . . . figure it out quick, because if you get to that point, it’s a long row to hoe to get out of that.” Tr. at 81. He decided to permanently abstain from drinking, and he contacted the EAP Director. At her suggestion, he enrolled in and completed an intensive out-patient treatment program of 60-hours’ duration, with monthly individual counseling sessions and follow-up attendance at Alcoholics Anonymous (AA) meetings, both at home and in other cities to which the individual would travel for employment-related purposes. Tr. at 14-16, 25. She added that the individual has “really embraced” the AA part of the program, is diligently working through AA’s 12 steps, and has gained better insight into, and judgement about, his drinking problem. Tr. at 20, 24. The individual also began participating in a 12-step program sponsored by his church, and obtained an “accountability partner,” which is that program’s functional equivalent of an AA sponsor. Tr. at 35, 85-86. The accountability partner testified that the individual has approached his recovery with “great fortitude,” and has “never wavered.” Tr. at 36. The individual testified

that he has abstained from alcohol usage since February 27, 2009, and that he intends to never drink again. Tr. at 82, 89. The testimony about his period of abstention was supported by the statements of his accountability partner and his friend. Tr. at 38, 42, 65.

After observing this testimony, the DOE psychiatrist also testified. She stated that, although the individual did not meet the criteria necessary for a diagnosis of alcohol abuse or dependence, he was a user of alcohol habitually to excess, and was at “a very early stage” of developing a diagnosable alcohol use disorder. Tr. at 100-102. She based these last two conclusions primarily on the individual’s daily consumption of six to ten beers during the period from 2002 to 2007. Tr. at 101. In her report, she concluded that in order to demonstrate adequate evidence of rehabilitation, the individual would have to satisfactorily complete a minimum of 50 hours in a professionally-led substance abuse treatment program over a minimum of six months (including aftercare), while completely abstaining from alcohol use during that period. DOE Ex. 7 at 14. At the hearing, she opined that the individual was demonstrating adequate evidence of rehabilitation. Tr. at 109. She explained that, although he had not accrued six months of sobriety as of the date of the hearing, he had exceeded the amount of treatment that she had recommended, and he was still participating in individual counseling sessions with the EAP Director. *Id.* She also found it very significant that the individual had progressed from an attitude of arrogance during his evaluation to one of humbly admitting that he was a problem drinker. Tr. at 102-103.

I agree with the DOE psychiatrist that the individual is currently exhibiting adequate evidence of rehabilitation. Although I am concerned that, as of the date of the hearing, the individual had accrued less than the six months of sobriety recommended by the DOE psychiatrist, I note that the individual’s alcohol consumption has generally followed a downward trend since his divorce from his second wife, that he has not consumed alcohol to the point of intoxication for nine months, that he has not engaged in a pattern of excessive alcohol use for over a year-and-a-half, and that he was not diagnosed as suffering from an alcohol use disorder. When coupled with the individual’s diligent participation in counseling and in 12 step programs offered by AA and by his church, I am convinced that a return to the individual’s previous pattern of excessive drinking is unlikely.

Regarding the DOE’s security concerns under criterion (l), I find that the concerns raised by the individual’s 1994 DUI arrest have been mitigated by the passage of over 14 years without further documented legal difficulties. In addition, the individual has changed the behavior underlying that arrest by ceasing his consumption of alcohol.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has successfully addressed the DOE’s security concerns under criteria (j) and (l). I further conclude that he has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual should be granted a security clearance. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Senior Hearing Officer  
Office of Hearings and Appeals

Date: August 27, 2009